

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Registration No. 3,343,180

77/125,342

Mark: Episode

Cancellation No. 92052967

Registration Date:

November 27, 2007

Episode Audio,

Petitioner,

v.

Wirepath Home Systems, LLC,

Respondent.

OPPOSITION TO MOTION TO DISMISS

Petitioner, Episode Audio respectfully submits this opposition to the Respondent's (Wirepath) motion to dismiss filed on 12-23-2010 under Rule 12(b)(6) of the Federal Rules of Civil Procedure and TBMP 503.02

Background

Episode Audio's company was registered on 10-29-2004 with the Orange County Clerk-Recorder in California for the purpose of design, research, manufacturing and consultation in the Speaker/Audio for consumer electronics.



On 1-11-2007, Episode Audio, the Respondent, Dai-ichi Electronics (offices in U.S. and the Philippines) and Menlo Scientific in USA partnered to design, develop and manufacture speakers for the in international market.

From 2-4-2007 to 3-8-2007, Ira Pazandeh of Episode Audio spent almost the entire month of February and early part of March of 2007 in the Philippines in fulfilling his obligations to the above partners.

On 2- 16-2007, Wirepath's abandoned application for "Intent to Use" was granted.

About two weeks before the Application'342, signed on 3-8-2007, Episode Audio met and were mutually and officially introduced to Mr. Jay Faison, the president of Wirepath, , the Respondent and his staff of four (4) in the demonstration room at Dai-ichi Electronics. In this meeting at Dai- ichi Electronics, Episode Audio, the Petitioner demonstrated a new home theater setup with speakers designed by the efforts of Episode Audio, Dai- ichi Electronics and Menlo Scientific. This demonstration was followed for which all of us including Wirepath's staff had lunch at Dai- ichi's mess hall.

On 3-8-2007, Ira Pazandeh of Episode Audio, the Petitioner left Dai- ichi, Philippines with speaker samples and speaker parts to continue its relationship with the above partners.

On 3-8-2007 Wirepath, the Petitioner, under oath, signed the Trademark Application'342 without any regards to the Petitioner's rights and trademark laws which clearly states:

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

On 4-19-2007 Episode Audio, after returning from the Philippines, 3-9-2007, the Petitioner was served with a Cease and Desist letter by Ms. Jayne Hunter of Robinson, Bradshaw & Hinson, P.A. law firm, the attorney for Wirepath, the Respondent.

On 5-16-2007 Episode audio hired Buche & Associates, P.C, to respond to the above letter.

On 8-30-2010 Episode audio the Petitioner filed Petition to Cancel Wirepath's registered mark.

On 10-11-2010 Wirepath, the Respondent filed motion for a more definite statement.

On 11-29-2010 Episode Audio, the Petitioner filed an amended petition

On 12-23-2010 Wirepath, the Respondent filed a motion to dismiss

Argument

Rule 12(b)(6) of the Federal Rules of Civil Procedure

In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

Wirepath, the Respondent signed Application '342 on 3-8-2007. Based on **fact** and based on his own admission, Wirepath **undeniably** knew his statement was false, but Wirepath without any regards to trademark laws and the Petitioner's rights made a false statement on his application of '342. This **undeniable** and **explicit** fact will and cannot be changed by the motion to dismiss by alleging that the Petitioner allegations are "**only implied**". Even though, Wirepath's admission, knowingly signed the application, by blurring the fact by asserting '**knew or should have known**' knowledge of the Petitioner Episode Audio should not grant to dismiss.

The Subsequent cease and desist letter to Episode Audio, the Petitioner, by Wirepath's continued malicious activities on the internet is the core requisite of intention is as why a false statement was made on 3-8-2007.

503.02 Nature of Motion

A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint. In order to withstand such a motion, a pleading need only allege such facts as would, if proved, establish that the plaintiff is entitled to the relief sought, that is, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought (in the case of an opposition), or for canceling the subject registration (in the case of a cancellation proceeding).

503.02- Continued: *Whenever the sufficiency of any complaint has been challenged by a motion to dismiss, it is the duty of the Board to examine the complaint in its entirety, construing the allegations therein liberally, as required by Fed. R. Civ. P. 8(f), to determine whether it contains any⁶⁶ allegations, which, if proved, would entitle the plaintiff to the relief sought.*

Episode Audio has filed two petitions. The first petition to cancel on 8/30/2010 and the amended petition on 11/29/2007 to cancel Wirepath's registration' 342 based on,

- 1- Alleged Fraud (false statement on the Application, 342), on page 3 of amended petition
- 2- Likelihood of Confusion, on page 4 of amended petition

In both of the aforementioned petitions, The Petitioner, Episode Audio asserts that the information in the amended pleading was sufficient to satisfy the above Rule 12(b)(6) of the Federal Rules of Civil Procedure and trademark rule 503.02, which is now has been fully tested and proved by the Respondent's motion to dismiss, submitted by the Respondent. This admission

by the Respondent Wirepath without revealing the exact date of this meeting in the Philippines (only president of Wirepath knows this date) approximately two weeks before the Application'342, on petition to dismiss motion dated 12-23-2007 is further reason for this opposition.

All the instance proceedings references that have been cited are misconstrued in the petition to dismiss is in order to dismiss the amended petition filed by the Petitioner and further to discredit and deny Petitioner's rights in this preceding. Wirepath's assertion in these proceeding instances are misconstrued and they are not in the light most favorable to the Petitioner. Petitioner's amended petition is based on solid and undeniable fact(S). For these reasons the petition to cancel should not be dismissed.

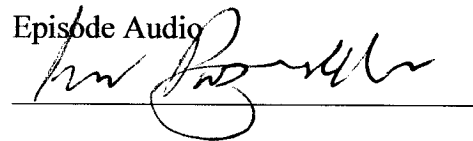
I hereby, Ira Pazandeh, the petitioner for "Episode Audio", for all the foregoing reasons the respectfully submits to the Board to accept this motion and allow the Petitioner to pursue its petition to cancel based on fact(s)that was initially filed.

Dated: January ¹⁰....., 2010

Respectfully submitted,

Ira Pazandeh

Episode Audio

A handwritten signature in black ink, appearing to read "Ira Pazandeh", is written over a horizontal line.

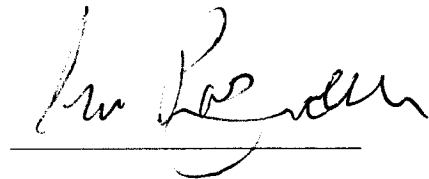
I hereby certify that a duplicate copy of this answer was served at the following address below:

Robinson, Bradshaw & Hinson

Mr. Roberet H Cameron

101 North Tryon Street, Suite 1900

Charlotte, NC 28246

A handwritten signature in dark ink, appearing to read "Mr. Roberet H. Cameron", is written over a horizontal line.